

Bereskin & Parr

INTELLECTUAL PROPERTY LAW



July 8, 2005

1761
JF

Timothy J. Sinnott B.S., M.Sc. (Phys.), LL.B.
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Your Reference: 10/028,666
Our Reference: 9973-17

REQUEST FOR REINSTATEMENT

The Commissioner of Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
U.S.A.

ATTENTION: GROUP ART UNIT 1761

Dear Sir:

Re: United States Divisional Application Serial No. 10/028,666
Filed: December 28, 2001
Entitled: DISPLAY PACKAGING FOR FRUITS OR VEGETABLES
Inventor: Emmett M. Flynn

We hereby request that the Examiner withdraw the holding of abandonment based on failure to receive an Office Action which appears to have occurred in connection with the above-noted application. The relevant facts are set out below. This request is being filed in accordance with the procedures set out in the Manual of Patent Examining Procedure, section 37 CFR 1.181 1.A.

After conducting the searches as set out hereinbelow, applicant's agent is satisfied that the Office Action apparently mailed September 16, 2004, was not received by the undersigned firm.

All correspondence received by this firm from any Patent Office, including the U.S. Patent and Trademark Office, is first opened by the firm's mailroom staff. Upon opening the correspondence, the firm's staff trained for this purpose reviews the correspondence to determine whether any due dates for response are set out in the correspondence. When it is determined that a due date does exist, the due date is entered against the file in the firm's computer docketing system. If the due date had been entered against the above-noted application, then it would have appeared in our firm's due date system under our firm's file number 9973-17 which is the firm's file identified number (attorney docket number).

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TORONTO MISSISSAUGA WATERLOO MONTREAL

A copy of a printout of the firm's computerized records for this application is attached to this request. The first page of the printout identifies the application by reference to various parameters including our file number, the client name, official title of the invention and the like. At the middle of page 1, there is an area entitled Due Dates. It will be observed that there is only one "check" due date entered against this application for ensuring that the request for reinstatement is filed. At the bottom of page 1 of the printout and continuing on page 2 is an area which identifies the Due Date History of the file. In this particular case, the due date history shows 19 entries in the due date history beginning with a due date entry for filing an information disclosure statement (March 28, 2002 entry). There are four entries for actions entered with due dates in the year 2002. There are five entries for actions entered with due dates in the year 2003. There are 10 entries for actions entered with due dates in the year 2004 beginning with an Office Action extension due date of January 4, 2004. There is no indication in connection with the due date history that any Office Action due on October 16, 2004 was received or marked as having been done.

An examination was conducted of the appropriate files. There is no copy of an office action mailed September 16, 2004 with a due date of October 16, 2004 in this file. In addition to searching the file of the present application, a search was conducted of all other active files for this client to check against an inadvertent filing of the Office Action in some other file for the client. That check has also failed to locate any Office Action pertinent to this file.

As a further check, we then checked the firm's records for due dates entered showing a due date of October 16, 2004. A copy of our firm's due date report printed on October 15, 2004, which lists all due dates in our computer system for that date is attached and titled "Saba's US Foreign Due Date Report - Due Date Report for the Period October 16, 2004 to October 18, 2004". We have masked out the client names and matter names for confidentiality purposes, but as can be seen, none of the attorney docket numbers (Client/Matter #) relate to the applicant (our attorney docket number 9973-17).

Having conducted all of these checks, I am satisfied that we did not receive the Office Action. If we had received the Office Action, it would have been entered into our firm's due date system which has not been done. If the Office Action had been received and inadvertently misfiled, it would have been filed in either its proper file or another file for this client and no such misfiling appears to have occurred. In all of the circumstances, I am satisfied that our firm did not receive the Office Action identified. In view of the foregoing, the undersigned respectfully petitions that the holding of abandonment be withdrawn and that a copy of the outstanding Office Action be mailed to the undersigned for response in due course.

This statement is made by the undersigned who declares that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements are made with knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of the Title 18 of the U.S. Code and that

such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Respectfully submitted,

EMMETT M. FLYNN

A handwritten signature in black ink, appearing to read 'Timothy J. Sinnott', written over a horizontal line.

Timothy J. Sinnott

Registration No. 31,083

/hs

Encl.

Patent Cases

Client & Matter No. **009973 -A- 0000017** Status ☒ Active ☐ Inactive Last Modified **Jun 29, 2005**
 Client Billing Ref. **Emmett M. Flynn** ID = 120760
 Cl. Form Letter Ref. **Emmett M. Flynn**

Client Name **Flynn, Emmett** Type **DC**
 Client Title **DISPLAY PACKAGING FOR FRUIT OR VEGETABLES (DIV.)** Status

Official Title **DISPLAY PACKAGING FOR FRUIT OR VEGETABLES**

Applicant No. **FLYNN** Applicant Name **Flynn Produce Ltd.**
 Assignee No. Associate Name
 Associate No. Associate Name

Case Type	P	Originating Appl'n	<input checked="" type="radio"/> Yes <input type="radio"/> No	Filing Date	Dec 28, 2001
Country	US	Convention Claimed	<input type="radio"/> Yes <input checked="" type="radio"/> No	Serial No.	10/028666
Lawyer Resp.	154	PCT Application	<input type="radio"/> Yes <input checked="" type="radio"/> No	Reg'n Date	00/00/00
Lawyer Assigned		Small Entity	<input type="radio"/> Yes <input checked="" type="radio"/> No	Reg'n No.	
Paralegal		Info. Disclos. Filed	<input type="radio"/> Yes <input checked="" type="radio"/> No	Publ'n Date	00/00/00
PCT Chapter		Missing Parts Req'd	<input type="radio"/> Yes <input checked="" type="radio"/> No	Assign. Date	00/00/00
		Main. Fee Reminder	<input checked="" type="radio"/> Yes <input type="radio"/> No	Assign. No.	
		Instructions Req'd	<input checked="" type="radio"/> Yes <input type="radio"/> No	Status Due	Sep 18, 2005

Due Dates: 1

Due Date	Action	Instr.	Base Date	o/r	Comments
Aug 14, 2005	CHECK	<input checked="" type="checkbox"/>	00/00/00	<input checked="" type="checkbox"/>	- (REQUEST FOR REINSTATEMENT FILED?)

Inventors **Emmett M. Flynn**

Comments

Assoc. Ref.		Priority/Basis (CP) ...	Parent File (PF) ...
Examiner		Country CA	Country US
Division		Filing Date Dec 1, 1999	Filing Date Mar 23, 2000
Floor		Serial No. 2291604	Serial No. 09/533692
Class		Reference	Reference
Sub Class		Date Opened Dec 14, 2001	Date Closed 00/00/00
Group/Batch			

Accounting

Office		Cross Ref. No.		Attention Line & Billing Address (if not client address)
Format	1	Taxable	<input checked="" type="radio"/> Yes <input type="radio"/> No	
Currency	1	Interest	<input checked="" type="radio"/> Yes <input type="radio"/> No	
Industry		Billing Address		

Due Date History: 19

Due Date	Action	Instr.	Date Done	o/r	Approv.	Reason Removed
Mar 28, 2002	INFODS	<input checked="" type="checkbox"/>	00/00/00	<input checked="" type="checkbox"/>	154	DONE
Apr 28, 2002	FRRECD	<input checked="" type="checkbox"/>	00/00/00	<input checked="" type="checkbox"/>	154	RECD
Sep 30, 2002	OARECD	<input checked="" type="checkbox"/>	00/00/00	<input checked="" type="checkbox"/>	154	EXTEND
Dec 28, 2002	FA	<input checked="" type="checkbox"/>	00/00/00	<input checked="" type="checkbox"/>	154	NOTDO
Jun 28, 2003	OARECD	<input checked="" type="checkbox"/>	00/00/00	<input checked="" type="checkbox"/>	154	EXTEND
Sep 18, 2003	CHECK	<input checked="" type="checkbox"/>	Oct 1, 2003	<input checked="" type="checkbox"/>	154	REMSSEN
Oct 18, 2003	OA3	<input checked="" type="checkbox"/>	Oct 17, 2003	<input checked="" type="checkbox"/>	154	EXTEND
Nov 18, 2003	1STEXT	<input checked="" type="checkbox"/>	Nov 18, 2003	<input checked="" type="checkbox"/>	019	DB&A
Dec 28, 2003	OARECD	<input checked="" type="checkbox"/>	Jul 29, 2003	<input checked="" type="checkbox"/>	019	RECD
Jan 4, 2004	OAEXT	<input checked="" type="checkbox"/>	00/00/00	<input checked="" type="checkbox"/>	154	DONE

Patent Cases

Due Date	Action	Instr.	Date Done	o/r	Approv.	Reason Removed
Jan 18, 2004	FINOA		Nov 18, 2003		154	DONE
Jun 5, 2004	CHECK		00/00/00		154	EXTEND
Jul 5, 2004	CHECK		00/00/00		154	DONE
Jul 28, 2004	APPEAL		00/00/00		154	ERROR
Aug 5, 2004	FINOA		Aug 5, 2004		154	EXTEND
Sep 5, 2004	1STEXT		Sep 3, 2004		019	DB&A
Oct 5, 2004	2NDEXT		Sep 3, 2004		154	DONE
Nov 5, 2004	FINEXT		Oct 28, 2004		154	DONE
Nov 5, 2004	APPEAL		Oct 28, 2004		154	DONE

Correspondence: 1

To	Emmett Flynn Flynn Produce Ltd. 1143 Haultain Court Mississauga, Ontario Canada L4W 2K1
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Form Letters Printed: 0

Date Printed	Form Code
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Parts: 1

Part	Contents	Signed Out By	Sign Out Date	Urgent	Req. By	T#/X Ref.	Closed Reason	Box#
001		154	Jul 7, 2005					

Saba's US & Foreign Due Date Report
Due Date Report For the Period Oct 16, 2004 to Oct 18, 2004

<u>Client/Matter #</u>	<u>Client Name</u>	<u>Client Ref.</u>	<u>Client Matter Name</u>	<u>Case</u>	<u>Reg'd</u>	<u>Action</u>	<u>Due Date</u>	<u>Instr.</u>	<u>Resp. Assn.</u>	<u>Para.</u>	<u>Comments</u>
000295-0001441	In	G		DN	<input checked="" type="checkbox"/>	CHECK	Oct 16, 2004	<input checked="" type="checkbox"/>	009	238	282
				CL					CR	BC	JAM
000295-0001483	In	G		OP	<input checked="" type="checkbox"/>	CHECK	Oct 16, 2004	<input checked="" type="checkbox"/>	009	238	
				NZ					CR	BC	check for Village's evidence
005174-0000073	Cr	B		P	<input checked="" type="checkbox"/>	OARECD	Oct 16, 2004	<input checked="" type="checkbox"/>	177	120	
				US					SDJ		
006704-0000350	H	D		P	<input checked="" type="checkbox"/>	FILE	Oct 16, 2004	<input checked="" type="checkbox"/>	193	259	
				SG					MG	MS	
009351-0000229	H	H		PP	<input checked="" type="checkbox"/>	CLOSE	Oct 16, 2004	<input checked="" type="checkbox"/>	023	296	120
				US					HSF	FF	ODL
009351-0000230	H	H		PP	<input checked="" type="checkbox"/>	CLOSE	Oct 16, 2004	<input checked="" type="checkbox"/>	023	252	
				US					HSF	TO	
009351-0000231	H	H		PP	<input checked="" type="checkbox"/>	CLOSE	Oct 16, 2004	<input checked="" type="checkbox"/>	023	295	
				US					HSF	SSB	
009351-0000233	H	H		PP	<input checked="" type="checkbox"/>	CLOSE	Oct 16, 2004	<input checked="" type="checkbox"/>	023	252	
				US					HSF	TO	
009351-0000234	H	H		PP	<input checked="" type="checkbox"/>	CLOSE	Oct 16, 2004	<input checked="" type="checkbox"/>	023		
				US					HSF		
009351-0000235	H	H		PP	<input checked="" type="checkbox"/>	CLOSE	Oct 16, 2004	<input checked="" type="checkbox"/>	023		
				US					HSF		
009351-0000236	H	H		PP	<input checked="" type="checkbox"/>	CLOSE	Oct 16, 2004	<input checked="" type="checkbox"/>	023	296	120
				US					HSF	FF	ODL
009351-0000237	H	H		PP	<input checked="" type="checkbox"/>	CLOSE	Oct 16, 2004	<input checked="" type="checkbox"/>	023		
				US					HSF		
009351-0000238	H	H		PP	<input checked="" type="checkbox"/>	CLOSE	Oct 16, 2004	<input checked="" type="checkbox"/>	023		
				US					HSF		

Handwritten: **193** **259** **120** **ODL**
Divisional

Saba's US & Foreign Due Date Report
Due Date Report For the Period Oct 16, 2004 to Oct 18, 2004

Client Name		Client Matter Name		Case		Lawyer						
Client/Matter #	Client Ref.	Client Matter Name		Ctry.	Reg'd	Action	Due Date	Instr.	Resp.	Assn.	Para.	Comments
009351-0000239	H			1BLY PP	<input checked="" type="checkbox"/>	CLOSE	Oct 16, 2004	<input checked="" type="checkbox"/>	023	HSF		
009351-0000394	H			ID P	<input checked="" type="checkbox"/>	PUBLIC	Oct 16, 2004	<input checked="" type="checkbox"/>	023	HSF	120	
009351-0000405	H			IL P	<input checked="" type="checkbox"/>	ART19	Oct 16, 2004	<input checked="" type="checkbox"/>	023	HSF	120	
009351-0000416	H			PC	<input checked="" type="checkbox"/>	MPART	Oct 16, 2004	<input checked="" type="checkbox"/>	023	HSF	165	Discontinue to be extended - (EXTENDED)
009351-0000433	H			US	<input checked="" type="checkbox"/>	PUBLIC	Oct 16, 2004	<input checked="" type="checkbox"/>	023	HSF	ICMM	
009369-0000215	S			P	<input checked="" type="checkbox"/>	CHECK	Oct 16, 2004	<input checked="" type="checkbox"/>	193	MG	AN	inst.
009371-0000125	T			EA	<input checked="" type="checkbox"/>	CHECK	Oct 16, 2004	<input checked="" type="checkbox"/>	009	009	282	check domain name
010750-0000093	O			DN	<input checked="" type="checkbox"/>	EXPIRE	Oct 16, 2004	<input checked="" type="checkbox"/>	005	006	HH	reg. expiration
010984-0001030	M			US	<input checked="" type="checkbox"/>	OA3	Oct 16, 2004	<input checked="" type="checkbox"/>	005	006	HH	
013922-0000014	J			IVE P	<input checked="" type="checkbox"/>	PUBLIC	Oct 16, 2004	<input checked="" type="checkbox"/>	069	PCMC	120	
013922-0000014	G			US	<input checked="" type="checkbox"/>	ART19	Oct 16, 2004	<input checked="" type="checkbox"/>	069	PCMC	120	
000295-0001352	I			P	<input checked="" type="checkbox"/>	EVID	Oct 17, 2004	<input checked="" type="checkbox"/>	009	009	238	statutory declaration due
000295-0001420	I			SG	<input checked="" type="checkbox"/>	CHECK	Oct 17, 2004	<input checked="" type="checkbox"/>	009	009	238	follow up
	G			MX	<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>	009	009	238	

Saba's US & Foreign Due Date Report
Due Date Report For the Period Oct 16, 2004 to Oct 18, 2004

<u>Client Matter #</u>	<u>Client Name</u>	<u>Case Ctry.</u>	<u>Rec'd</u>	<u>Action</u>	<u>Due Date</u>	<u>Inst. Resp. Asn.</u>	<u>Lawyer</u>
000374-0000068	Ge	P JP	<input checked="" type="checkbox"/>	RENEW	Oct 17, 2004	003 RJP	Boyd R. Sussman
003041-0000096	Ca Ke	TM US	<input checked="" type="checkbox"/>	CHECK	Oct 17, 2004	006 273 HPH VK	(CANADIAN REGISTRATION)
003041-0000101	Ca Ke	TM US	<input checked="" type="checkbox"/>	CHECK	Oct 17, 2004	006 273 HPH VK	(CANADIAN REGISTRATION)
007685-0000065	Th A.	NE PP US	<input checked="" type="checkbox"/>	FA	Oct 17, 2004	193 259 MG MS	Temer / Valdes
007685-0000065	Th A.	NE PP US	<input checked="" type="checkbox"/>	FILREG	Oct 17, 2004	193 259 MG MS	
009369-0000297	St H.	JLUN P AR	<input checked="" type="checkbox"/>	PRECOR	Oct 17, 2004	193 259 MG MS	
009801-0000009	Cl M	PP US	<input checked="" type="checkbox"/>	CLOSE	Oct 17, 2004	193 258 259 MG PP MS	
010251-0000023	N E	PP US	<input checked="" type="checkbox"/>	CLOSE	Oct 17, 2004	193 259 MG MS	
010251-0000026	N E	PP US	<input checked="" type="checkbox"/>	CLOSE	Oct 17, 2004	193 259 MG MS	
010251-0000027	N E	P US	<input checked="" type="checkbox"/>	REMIN	Oct 17, 2004	193 259 MG MS	SEND NOTICE OF ALLOWANCE TO
010723-0000076	U B	P PC	<input checked="" type="checkbox"/>	CORRECT	Oct 17, 2004	023 285 HSF AT	To correct the title of invention
010723-0000076	U B	P PC	<input checked="" type="checkbox"/>	FORDRA	Oct 17, 2004	023 285 HSF AT	Done
010723-0000076	L E	P PC	<input checked="" type="checkbox"/>	POFA	Oct 17, 2004	023 285 HSF AT	

Saba's US & Foreign Due Date Report
Due Date Report For the Period Oct 16, 2004 to Oct 18, 2004

Client/Matter #	Client Name	Client Ref.	Case	Reg'd	Action	Due Date	Ins. Assn. Para.	Lawyer	Comments
011026-0000001	E		P	<input checked="" type="checkbox"/>	RENEW	Oct 17, 2004	033	033	
011906-00000094	F		P	<input checked="" type="checkbox"/>	PUBLIC	Oct 17, 2004	217	217	Melissa
011906-00000094	F		PC	<input checked="" type="checkbox"/>	RECOOP	Oct 17, 2004	217	217	Monday
012723-0000011	N		P	<input checked="" type="checkbox"/>	POFA	Oct 17, 2004	493	493	
002223-0000136	P		PC	<input checked="" type="checkbox"/>	2NDEXT	Oct 18, 2004	275	275	
009351-0000434	H		P	<input checked="" type="checkbox"/>	MPART	Oct 18, 2004	023	023	to be extended
009351-0000501	H		P	<input checked="" type="checkbox"/>	CHECK	Oct 18, 2004	023	023	
009369-0000301	S		P	<input checked="" type="checkbox"/>	MPART	Oct 18, 2004	198	198	to be extended
010984-0001018	M		P	<input checked="" type="checkbox"/>	ISSFEE	Oct 18, 2004	005	005	
011309-0000001	E		P	<input checked="" type="checkbox"/>	1STEXT	Oct 18, 2004	171	171	to be extended
011812-00000092	C		P	<input checked="" type="checkbox"/>	INFODS	Oct 18, 2004	217	217	
012379-00000018	R		PP	<input checked="" type="checkbox"/>	CHECK	Oct 18, 2004	154	154	rec. design memo?
012536-00000002	O		P	<input checked="" type="checkbox"/>	FINEXT	Oct 18, 2004	193	193	

Saba's US & Foreign Due Date Report
Due Date Report For the Period Oct 16, 2004 to Oct 18, 2004

Client Name		Case		Due Date		Lawyer		Comments
Client/Matter #	Client Ref.	Client Matter Name	Ctry.	Rec'd	Action	Inets	Resp. Assn. Para.	
012811-0000243	Ci M	CH	P	<input checked="" type="checkbox"/>	CHAP2	<input checked="" type="checkbox"/>	009 120 PCMC ODL	inst rec file in US & EP
013192-0000002	In H		P	<input checked="" type="checkbox"/>	INFODS	<input checked="" type="checkbox"/>	196 249 120 SB JF	
013581-0000008	Ni B-	3S (PCT NAT)	P	<input checked="" type="checkbox"/>	RESP	<input checked="" type="checkbox"/>	193 298 259 MG PP MS	
013774-0000004	He W	IDS (PCT NAT)	P	<input checked="" type="checkbox"/>	OARECD	<input checked="" type="checkbox"/>	006 240 HHH JMM	

File 1/1/04